



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,884	01/15/2004	David Wayne Spears	SPEAD-80546	8466
24201 7590 07/07/2009 FULWIDER PATTON LLP HOWARD HUGHES CENTER 6060 CENTER DRIVE, TENTH FLOOR LOS ANGELES, CA 90045				
EXAMINER				
FRENEL, VANEL				
ART UNIT		PAPER NUMBER		
3687				
MAIL DATE		DELIVERY MODE		
07/07/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary**Application No.**

10/759,884

Applicant(s)

SPEARS ET AL.

Examiner

VANEL FRENEL

Art Unit

3687

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 3/30/09.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Notice to Applicant

1. This communication is in response to the Amendment filed 3/30/09. Claims 1-9 have been cancelled. Claims 10-28 are pending.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 10-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goel (2008/0052185) in view of Mesaros (7,181,419).

As per claim 10, Goel discloses a computer readable storage medium encoded with computer program instructions which when accessed by a computer cause the computer to load the program instructions to a memory therein creating a special purpose data structure causing the computer to operate as a specially programmed computer, executing a method of dynamic release date (See Goel, Paragraphs, 0482; 0858, 1043), comprising: creating in the specially programmed computer database a target release date (See Goel, Paragraphs 0482, 0858, 1043).

Goel does not explicitly disclose transmitting to an interface of the specially programmed computer the target release date and a target number of advance orders; receiving a number of advance orders from a plurality of advance purchasers;

transforming the target release date into an actual release date when the number of received advance orders from advance purchasers equals the target number of advance orders.

However, these features are known in the art, as evidenced by Mesaros. In particular, Mesaros suggests that the computer readable medium having transmitting to an interface of the specially programmed computer the target release date and a target number of advance orders (See Mesaros, Col.22, lines 17-67 to Col.23, line 44); receiving a number of advance orders from a plurality of advance purchasers (See Mesaros, Col.22, lines 17-67 to Col.23, line 44); transforming the target release date into an actual release date when the number of received advance orders from advance purchasers equals the target number of advance orders (See Mesaros, Col.29, lines 36-67).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the feature of Mesaros within the system of Goel with the motivation of providing buyers and sellers may concurrently sponsor a deal room/transaction to aggregate selling of and purchasing of goods/services by a plurality of sellers and buyers respectively. For example, multiple sellers and buyers may employ the present invention to create a deal room/transaction forum where a plurality of sellers and buyers may assemble to aggregate selling and buying of specific goods and/or services that the sellers wish to sell and the buyers desire to purchase (See Mesaros, Col.2, lines 23-34).

As per claim 11, Goel discloses a computer readable storage medium wherein the target release date is for the release of at least one of a compact disk and a dvd (See Goel, Fig.78).

As per claim 12, Goel discloses a computer readable storage medium as defined in claim 10, wherein the target release date is a release date for a movie (See Goel, Paragraph 1255).

As per claim 13, Goel discloses a computer readable storage medium wherein the method of dynamic release date further includes the step of advancing the target release date to a second, earlier revised release date when the target number of advance orders is received (See Goel, Paragraph 0280).

As per claim 14, Goel discloses a computer readable storage medium, wherein the method of dynamic release date further includes the step of setting a goal and, when both the goal is met and the target number of advance orders is received, advancing the target release date to a third revised release date that is earlier than the second revised release date (See Goel, Paragraph 0950).

As per claim 15, Goel discloses a computer readable storage medium wherein the method of dynamic release date further includes resetting the target release date to a second target release date when the target number of advance orders is not received

prior to the target release date (See Goel, 0280).

As per claim 16, Mesaros discloses a computer readable storage medium wherein the method of dynamic release date further includes offering incentives to potential purchasers to submit advance orders (See Mesaros, Col.20, lines 13-27).

As per claim 17, Mesaros discloses a computer readable storage medium as defined in claim 10, wherein the method includes providing goal feedback information to at least some of the advance purchasers (See Mesaros Col.11, lines 55-67 to Col.12, line 1).

As per claim 18, Mesaros discloses a computer readable storage medium as defined in claim 10, wherein the method of dynamic release date further includes transmitting to an interface of the specially programmed computer a target release date, a target number of advance orders, and a second release date, wherein the target release date becomes an actual release date if the target number of advance orders is received, and the second release date becomes the actual release date if the target number of advance orders is not received (See Mesaros, Col.11, lines 55-67 to Col.12, line 1).

As per claim 19, Goel discloses a computer readable storage medium as defined in claim 10, wherein the method of dynamic release date further includes releasing a

product to advance purchasers on the actual release date, and releasing the product to other purchasers at a later release date (See Goel, Paragraph 0280).

Claims 20-28 recite the same limitations as claim 1 above are therefore rejected for the same reasons, and incorporated herein.

Response to Arguments

4. Applicant's arguments filed on 3/30/09 with respect to claims 10-28 have been fully considered but they are not persuasive.

(A) At pages 7-9 of the response filed on 3/30/09, Applicant argues the followings:

(i) The cited references do not teach or suggest the limitations of claims 20-28 "one form of the product is released to advance purchasers on the actual release date, and a different form of the product is released to other purchasers at a later release date".

(ii) There is no combination or suggestion to combine Goel and Mesaros.

(B) With respect to Applicant's first argument, the Examiner respectfully submitted that He relied upon the teaching of Goel for such a feature (See Paragraph 0160 which can be read as credit card or cash value). Therefore, Applicant argument is not persuasive and the rejection is hereby sustained.

(C) With respect to Applicant's second argument, the Examiner respectfully submits that obviousness is determined on the basis of the evidence as a whole and the relative

persuasiveness of the arguments. See *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992); *In re Hedges*, 783 F.2d 1038, 1039, 228 USPQ 685,686 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 USPQ 785,788 (Fed. Cir. 1984); and *In re Rinehart*, 531 F.2d 1048, 1052, 189 USPQ 143,147 (CCPA 1976).

Using this standard, the Examiner respectfully submits that he has at least satisfied the burden of presenting a prima facie case of obviousness, since he has presented evidence of corresponding claim elements in the prior art and has expressly articulated the combinations and the motivations for combinations that fairly suggest Applicant's claimed invention. Moreover, in the instant case, the Examiner respectfully notes that each and every motivation to combine the applied references are accompanied by select portions of the respective reference(s) which specifically support that particular motivation and/or an explanation based on the logic and scientific reasoning of one ordinarily skilled in the art at the time of the invention that support a holding of obviousness. As such, it is NOT seen that the Examiner's combination of references is unsupported by the applied prior art of record. Rather, it is respectfully submitted that explanation based on the logic and scientific reasoning of one ordinarily skilled in the art at the time of the invention that support a holding of obviousness has been adequately provided by the motivations and reasons indicated by the Examiner, *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter., 4/22/93). Therefore, Applicant's argument is not persuasive and the rejection is hereby sustained.

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to VANEL FRENEL whose telephone number is (571)272-6769. The examiner can normally be reached on 6:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Matthew S. Gart can be reached on 571-272-3955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published

applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Vanel Frenel/

Examiner, Art Unit 3687

July 6, 2009